**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking on | ) | |
| Regulations Relating to Passenger | ) | |
| Carriers, Ridesharing, and New Online- | ) | Rulemaking 12-12-011 |
| Enabled Transportation Services | ) | (Filed December 20, 2012) |
| _____ | ) | |

**REPLY COMMENTS OF THE SAN FRANCISCO TAXI WORKERS ALLIANCE (SFTWA) ON ASSIGNED COMMISSIONER'S RULING INSTRUCTING COMMENT ON THE IMPACT OF PUBLIC UTILITY CODE SECTION 5401 ON RIDESHARING FEATURES OFFERED BY TRANSPORTATION NETWORK COMPANIES**

August 28, 2015

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The San Francisco Taxi Workers Alliance (SFTWA) submits this Reply in response to issues raised in parties' Comments on the impact of Public Utilities Code (PUC) § 5401.

## I. INTRODUCTION

Uber and Lyft are playing a game of smoke-and-mirrors in their attempt to convince the Commission that their ridepool charges are not individual fares that violate PUC § 5401. As explained below, their contentions are groundless.

## II. RESPONSE TO OPENING COMMENTS OF RASIER-CA, LLC (UBER)

Here is Uber's description of how uberPOOL works:

> The fares that uberPOOL driver-partners charge riders are based principally on a combination of two factors: time and distance. A rider using the Uber application to search for a transportation provider first enters his or her destination into the application. The application transmits this information to software on Uber's servers. On behalf of the driver-partner, the software calculates *a preliminary fare* that is determined by the expected time and distance to *the rider's* destination. Next, the Uber software applies an algorithm to determine *a discounted fare* that is based on additional factors and other adjustments. After *the fare* is calculated, it is transmitted to *the rider* on behalf of the driver-partner. Once the ride begins, the Uber application (operating in conjunction with Uber's software) attempts to match *the rider* with another rider travelling to a similar destination or a destination along a similar route. When the ride is over, Uber's software electronically collects *the fare* on behalf of the driver-partner.[1] (Emphasis added.)

Uber's description of its methodology makes it self-evident that its charges are individual fares in violation of PUC § 5401. Each fare on a pooled ride is separately calculated and exclusively charged to one rider. If there is only one pickup, one fare is charged. If there are two pickups, two distinct fares are charged. There is no "splitting" of fares; each passenger has a separate account with Uber, and each fare is charged only to that account. Because the passengers are most likely going different distances,

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[1] Opening Comments of Rasier-CA, LLC on the Impact of Public Utilities Code Section 5401, 8/21/15, at 4-5.

Uber's system will calculate a different fare for each.   This violates the unambiguous

language of PUC § 5401, which states in part:

> However, no charter-party carrier of passengers shall . . . demand or
> receive compensation . . . *that shall be computed, charged, or assessed*
> on an individual fare basis . . . "  (Emphasis added.)

Uber's system itself offers a useful illustration of the difference between a group

and individual fare.  When you use one of Uber's other services, one fare is charged for

the ride, no matter how many passengers are in the vehicle.  These are truly single,

group fares, in sharp contrast to the individual fares that uberPOOL riders with different

pickup locations are charged.

In an attempt to obfuscate the obvious, Uber confounds the issue of individual

fares with the requirement that charter-party carriers (CPCs) charge by time and/or

distance :

> The Commission has found carriers to be charging an "individual
> fare" where the fare was a *set dollar amount* "per person," "per capita" or
> "per seat". . . .
> Under these well-established principles, the uberPOOL service
> does not enable driver partners to charge an "individual fare."  *The cost of
> a ride facilitated using the uberPOOL service is not a per-person or per-
> seat fee, like in the cases summarized above.  Rasier-CA driver-partners
> who organize prearranged rides using the uberPOOl service charge riders
> based on time and distance – just like any other TNC ride.*  As this
> Commission has long recognized, "persons chartering a vehicle [and]
> *dividing up the cost among themselves*" does not amount to charging an
> "individual fare."  In addition, the fare is not "per person" or "per seat"
> because each uberPOOL rider is allowed to bring other people into the
> chartered vehicle.[2]  (Emphasis added; footnotes omitted.)

The requirement that CPCs must charge by time and/or distance and the

prohibition on individual fares are separate and distinct:

> Charges for the transportation to be offered or afforded by a charter-party
> carrier of passengers shall be computed and assessed on a vehicle
> mileage or time of use basis, or a combination thereof . . . .  *However,* no

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[2] *Id., at 5-6.*

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charter-party carrier of passengers shall . . . demand or receive compensation . . . that shall be computed, charged, or assessed on an individual fare basis . . . "  (Emphasis added.)

The notion that uberPOOL passengers picked up at separate points are "dividing up the cost among themselves" is purely fanciful.  As noted above, each is being separately and uniquely charged, and neither is obliged to pay for the other's trip.

Secondly, it should be noted that Uber is not telling the truth about its uberPOOL charges.  At times it offers flat-rate rides on its service in blatant violation of PUC § 5401.  Here is Uber's own description of its charges as of February 2015:

> We've seen how popular our $5 flat rate uberPOOL promotion has been, which is why we've decided to extend it!
> Starting today you can get anywhere in SF for $7 or less.* That's every uberPOOL ride, anywhere between the Ferry Building and Ocean Beach. Ride while it lasts.[3]

Unless the Commission strictly deals with this unlawful behavior, it is bound to continue.

Lastly, when Uber is not charging a flat rate for its uberPOOL service, the opacity of its fare calculation is startling.  What are the "additional factors and other adjustments" that go into the "discounted fare" (surge pricing likely being one of them), and do they comport with the requirement that the fare be based on time and/or distance?  Fair and transparent pricing is a cornerstone of public transportation.   Even assuming that the rider is told the exact fare to be charged in advance of the ride (which is not clear from Uber's description), how is the person to know if it's comparable to what other riders are paying if the factors that go into it are part of a secret formula?  In contrast, taxi meter time-and-mileage charges are clearcut.

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[3] http://newsroom.uber.com/sf/2015/02/7-uberpool-rides/.  These flat fares are likely seasonal.

## II.  RESPONSE TO COMMENTS OF LYFT, INC.

### A.  Lyft's comments on PUC § 5401.

Here is Lyft's description of its Lyft Line service and pricing:

> When a user opens the Lyft application, there is an option to select
> "Line" at the top of the screen. The user is prompted to enter a pick-up
> location and destination. Prior to requesting a Lyft Line ride, the user is
> given a discounted quote that is calculated based on the user's pickup and
> drop-off points. *Even if the user is not matched with another user, Lyft
> honors the discounted fare quote.* Within minutes, the user is given an
> alert regarding his or her driver and whether a match with another user
> has occurred.
> . . . .
> Before a user requests a Lyft Line ride, the user receives a fare
> quote for the proposed ride. The quote represents a calculation based on
> time and distance, discounted by an algorithm that accounts for time,
> distance, time of day and location of the user. The algorithm takes into
> account historical data, such as traffic congestion and user demand at
> particular times of day.
> . . . . *Lyft has also run a few short-term promotions that feature
> price caps to encourage participation in the Lyft Line program.* Most
> importantly, by providing an estimate of a traditional Lyft ride and a Lyft
> Line ride at the time of request, Lyft Line allows users to see their
> estimated savings by sharing rides with other users.[4]  (Emphasis added.)

Unlike Uber, Lyft admits to its unlawful practice of charging flat fares.  As

discussed in SFTWA's Opening Comments, Lyft's MATCHMUNI promotion earlier this

year charged the same price as a ride on a San Francisco bus.[5]   In addition to its Lyft

Line flat rates, Lyft has been offering other flat-rate services at numerous "hot spots" it

has established in San Francisco.[6]

Lyft Line is similar to uberPOOL in most respects.  Lyft also makes an argument

similar to Uber's:

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[4] Comments of Lyft, Inc. on the Impact of Public Utility Code Section 5401, 8/21/15, at 2-3.
[5] http://blog.lyft.com/matchmuni/.  See SFTWA, Opening Comments, at 10.
[6] http://blog.lyft.com/posts/hotspots; http://blog.lyft.com/posts/100hotspots.

The language of Section 5401 was not intended to prevent charter-party carriers from providing carpool services, and should not be read as constraining TNCs from separately assessing charges on riders, *as long as the charges are computed and assessed on factors including mileage and/or time of use.*[7]

And again:

In other words, a TNC can calculate and assess through its platform a distance and/or time of use charge on each user partcipating in the TNC's shared ride platform without running afoul of Section 5401's language barring charter-party carriers from charging *the type of flat rate "individual fares" that tour buses and other passenger stage corporations charge.*[8]

Like Uber, Lyft confounds and conflates two distinct provisions of PUC § 5401: the requirement that CPCs charge by distance and/or time, and the prohibition on charging individual fares. Lyft seeks to bolster this interpretation with a letter written almost 40 years ago by the chair of a Senate Committee to the governor.[9] Since smartphone apps facilitating individual time-and-distance charges for pooled rides were beyond the horizon in 1976, it may be presumed that in equating individual fares with flat rates, the writer was merely reflecting the types of charges prevalent at that time; i.e., the single distance/mileage charges CPCs employed or the flat individual rates commonly charged by PSCs.

Lyft's reliance on the Commission's Decision in *Prime Time Shuttle International, Inc.,* also cited by Uber, is misplaced.[10] That Decision involved a CPC acting as a *sub-carrier* of a PSC. On that account, individual passenger charges did not offend PUC § 5401:

The fact that the charter-party carrier collects individual fares pursuant to Prime Time's tariffs in itself does not violate *PU Code § 5401*. In

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[7] Comments of Lyft, *supra,* at 7-8.
[8] *Id.,* at 9.
[9] *Id,.* at 10. "[CPCs] may not receive compensation charged on an 'individual fare' basis; that is, *they may not charge a <u>flat rate per person</u>.*" (Emphasis added in Lyft's Comments.)
[10] *Passenger Stage Corporation Operations of Prime Time Shuttle International, Inc.,* (1996) Decision No. 96-08-034, 67 CPUC2d 437, 1996 Ca. PUC LEXIS 854.

charter-party subcarriage, the driver and van are "hired" by and provide service no [*sic*] the PSC (here, Prime Time), not the passenger. The passenger's agreement is with Prime Time, which is responsible for providing the service to the passenger. Any driver for Prime Time, whether employee or nonemployee, must collect the tariffed fares and otherwise transport the passengers consistent with those tariffs. *Any other interpretation of PU Code § 5401 would convert than* [sic] *statute into an absolute prohibition on the use of charter-party subcarriers by PSCs.* We necessarily concluded in approving GO 15-A that no such prohibition existed, and we affirm that conclusion.[11] (Emphasis added.)

The issue then addressed in *Prime Time* was whether the revenue division between the PSC contractor and the CPC sub-contractor of properly charged individual fares violated PUC § 5401. The Commission stated:

> For purposes of this proceeding, we hold that *a division of revenues between a PSC and an underlying charter-party subcarrier* does not offend PU Code § 5401 merely because the division depends to some extent on the number of passengers transported, so long as that number is not the exclusive factor involved in calculating the subcarrier's compensation.[12]

The situation at hand is entirely different. Lyft, a CPC, is charging an individual fare and splitting it with the driver. **If Lyft's and Uber's reading of PUC § 5401 were to prevail, *all* CPCs could charge individual fares, so long as their charges were based on time and/or distance (as they must be). That would effectively write the prohibition against charging individual fares out of the law.**

Lyft concedes that the legislature's intent in passing PUC § 5401 was "to distinguish between how charter-party carriers and passenger stage corporations may charge customers for transportation services."[13] The intent to distinguish CPCs from PSCs applies throughout the Charter-party Carriers' Passenger Act.[14] Unless and until the legislature speaks differently, that intent still holds.

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[11] *Id.,* at 30.
[12] *Id.,* at 32.
[13] Lyft, Opening Comments, 8/21/15, at 3.
[14] PUC § 5351 *et seq.* See SFTWA, Opening Comments, 8/21/15, at 1.

### B. Lyft's Comments on TNC vehicle leasing.

Lyft uses the occasion of these Comments to ask for a "clarification" that "TNC

drivers may use leased or rental vehicles (including short term leases) in providing TNC

services, including ride sharing."[15]  Besides the fact that this request is off the subject,

no such "clarification" is warranted, since this practice is plainly contrary to the

Commission's Rules.  Regulatory Requirement b. states:

> TNCs shall clearly disclose, on their app and website, that TNCs facilitate
> rides between passengers and *private drivers using their own personal
> vehicles.*[16]

The Decision explains this as follows:

> The primary distinction beteween a TNC and other TCPs is that a TNC
> connects riders to *drivers who drive their personal vehicle, not a vehicle
> such as a limousine purchased primarily for a commercial purpose.*  To
> that end, a TNC is not permitted to itself own vehicles used in its operation
> or own fleets of vehicles.[17]

The leasing of vehicles, whether directly by TNCs,[18] by companies such as Breeze[19]

and Hyrecar[20] that purchase and lease vehicles to TNC drivers, or through other third

party arrangements, violate both the letter and the spirit of this pronouncement.  These

vehicles, like limousines, are purchased and/or leased *explicitly* for a commercial

purpose.  They are no more "personal vehicles" than a limousine or taxicab that is

personally owned by its driver and used for both commercial and personal purposes.

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[15] *Id.,* at 13.
[16] D. 13-09-045, at 29-30.
[17] *Id.,* at 24.  According the the U.S. Department of energy, average annual vehicle mileage for cars in the U.S. is about 11,000 a year.  http://www.afdc.energy.gov/data/10309
[18] Recode.net, 7/29/15.  http://recode.net/2015/07/29/uber-offers-revised-car-leasing-program-that-could-be-more-appealing-for-drivers/.
[19] https://www.join**breeze**.com/.  When Breeze started, it was leasing vehicles by the day or shift.
[20] http://www.hyrecar.com/.

## IV. CONCLUSION

Uber's and  Lyft's individual fares violate PUC § 5401.


Dated: August 28, 2015

Respectfully submitted,



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